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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 543

DONALD CHARLES TAYLOR
473 E. McKinley Avenue
Sunnyvale, CA 94086

A C C U S A T I O N

Respiratory Care Practitioner License No. 3813

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 7, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 3813 to Donald Charles Taylor (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.”

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).”

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications,
22 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
23 the meaning of this article. The board shall order the license suspended or revoked, or
24 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section
27 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
28 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act.

11 “(c) Conviction of a crime involving driving under the influence or reckless
12 driving while under the influence.”

13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,
16 the board or the administrative law judge may direct any practitioner or applicant found to have
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
18 investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other
22 administrative, filing, and service fees."

23 11. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs
26 associated with monitoring the probation. "

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1 FIRST CAUSE FOR DISCIPLINE

2 (Substantially-related Conviction)

3 12. Respondent is subject to disciplinary action under code sections 3750(d)
4 and 3752, 3750(g) and CCR 1399.370(a) and (c) [substantially-related conviction] in that he was
5 convicted of violating Vehicle Code section 23152(b) [driving under the influence of alcohol
6 with a blood alcohol content of .08% or higher.] The circumstances are as follows:

7 13. On or about July 24, 2008, California Highway Patrol Officer J. Fear
8 received a telephone call from Santa Clara Police Department of a possible driving under the
9 influence car turnover. When Officer Fear arrived on the scene at approximately 8:00 p.m.,
10 Officer Buckleman informed him that the driver had been transported to El Camino Hospital.
11 The driver was identified as Respondent via a copy of his California driving license.

12 14. On July 24, 2008, at approximately 9:10 p.m., Officer Fear made contact
13 with Respondent who was in a hospital bed at El Camino Hospital. Respondent admitted that he
14 had been driving his Toyota Matrix earlier that day, and had started driving from his home.
15 Respondent stated that he could not recall where he was going. He admitted that he drank a
16 bottle of vodka earlier in the day. Officer Fear asked Respondent a series of pre-field sobriety
17 test (FST) questions, and then administered a horizontal gaze nystagmus (HGN) test to him.
18 Respondent's eyes showed a lack of smooth pursuit in both eyes, a distinct and sustained
19 nystagmus at maximum deviation in both eyes, and an angle of onset prior to 45 degrees in both
20 eyes.

21 15. Respondent agreed to take a preliminary alcohol screening test (PAS).
22 The test results indicated the presence of ethyl alcohol in the amount of .26%/.267%. Based on
23 Respondent's admission to consuming a bottle of vodka, his admission to driving, and his poor
24 performance on the HGN and PAS tests, Officer Fear arrested Respondent for violating Vehicle
25 Code section 23152(a), [driving under the influence of alcohol.]

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1 16. Officer Fear transported Respondent to jail, and advised him of Vehicle
2 Code section 23612 [implied consent.]. Respondent chose a blood test. The blood draw was
3 performed by a certified phlebotomy technician. The results indicated Respondent had an
4 alcohol content of .270%.

5 17. On or about August 18, 2008, a criminal complaint titled *People of the*
6 *State of California vs. Donald Charles Taylor*, case no. BB835776 was filed in Superior Court,
7 Santa Clara County, San Jose Facility. Count 1 charged Respondent with a misdemeanor
8 violation of Vehicle Code section 23152(a) [driving under the influence of alcohol] and
9 contained a special allegation of Vehicle Code section 23578 for a blood alcohol content of .15%
10 or higher.

11 18. Count 2 charged a misdemeanor violation of Vehicle Code section
12 23152(b) [driving under the influence of alcohol with a blood alcohol content of .08% or higher.]
13 The complaint alleged the breath test results of .27% and contained a special allegation of
14 Vehicle Code section 23578 for a blood alcohol content of .15% or higher.

15 19. On or about September 8, 2008, Respondent was convicted on his plea of
16 nolo contendere to Count 2, a misdemeanor violation of Vehicle Code section 23152(b) [driving
17 under the influence of alcohol with a blood alcohol content of .08% or higher] and Vehicle Code
18 section 23578. Count 1 was dismissed.

19 20. Respondent was sentenced to three years court probation, ordered to attend
20 a First Offenders Program for nineteen months and enroll within twenty one days, ordered to pay
21 fines and serve six days in jail.

22 21. Therefore, respondent's license is subject to discipline based on his
23 conviction of Vehicle Code section 23152(b) [driving under the influence of alcohol with a blood
24 alcohol content of .08% or higher] and Vehicle Code section 23578 which is in violation of code
25 sections 3750(d) and 3752, 3750(g) and CCR 1399.370(a) and (c).

26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein
28 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 3813, issued to Donald Charles Taylor;

2. Ordering Donald Charles Taylor to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: May 6, 2009

Original signed by Colleen Whitestine for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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